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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,524	06/27/2000	PETER JOHN BURNE	0769.00140	8239

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08/08/2002

KENNETH I KOHN
KOHN & ASSOCIATES
30500 NORTHWESTERN HIGHWAY
SUITE 410
FARMINGTON HILLS, MI 48334

EXAMINER

PADMANABHAN, KARTIC

ART UNIT

PAPER NUMBER

1641

DATE MAILED: 08/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/582,524

Applicant(s)

BURNE ET AL.

Examiner

Kartic Padmanabhan

Art Unit

1641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 July 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☒ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 82-150.

Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: applicant's limitations of an application zone being upstream of the immobilized antibody has not been previously considered or searched. Therefore, it is a new issue that would need to be examined for new matter, as well as prior art. It is noted that this limitation is not required of dependent pending claims 95 and 127, as applicant contends..

Continuation of 5. does NOT place the application in condition for allowance because: of reasons set forth in the previous office action. In addition, applicant argues that the combination of the Bergman and May references is not appropriate because Bergman states that the substrates and conditions employed in the immunological reactions should not differ from other conventional immunological assay methods. However, the use of a test strip is interpreted as being a conventional immunological assay method. Further, applicant points to the examples of Bergman in maintaining that the combination is improper, but it is noted that a disclosure is, in no way, limited by its examples. Further, although the labels used by Bergman may not be ideal for test strip assays, these labels still could have been used with May with a reasonable expectation of success. Applicant further argues that the antigen initially provided on the application zone can bind either autoantibodies or immobilized antibody. This argument is moot, as this limitation only appears in new claims 151 and 152, neither of which have been entered. Finally, applicant's general assertions that the combination of Bergman, May, and/or Janeway, Foster, and Bergmann do not teach the claimed invention and one would not have had a reasonable expectation of success in undertaking an assay using this combination is not persuasive for reasons set forth in the previous office action.



LONG V. LE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

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